



General Adjudications

***Water User's Claims – from
Evaluation to Publication***

Water Law & Policy Seminar

March 20, 2017

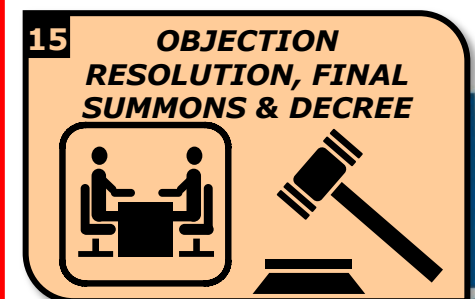
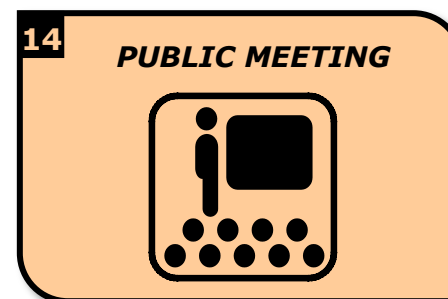
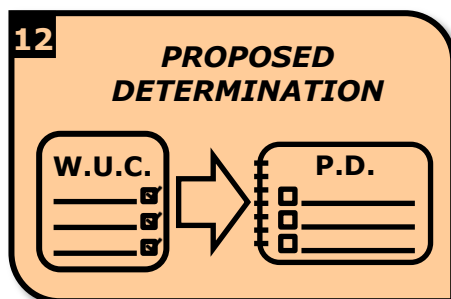
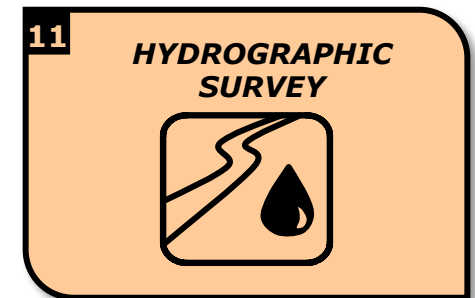
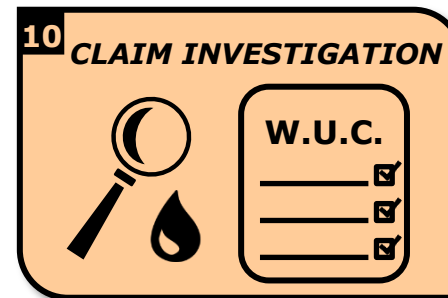
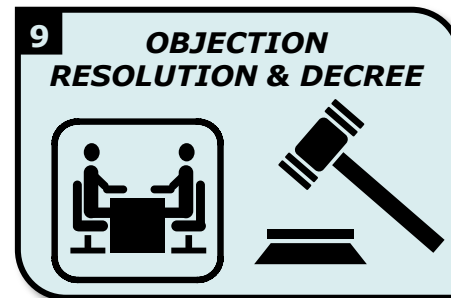
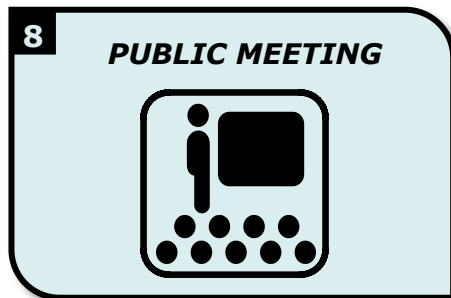
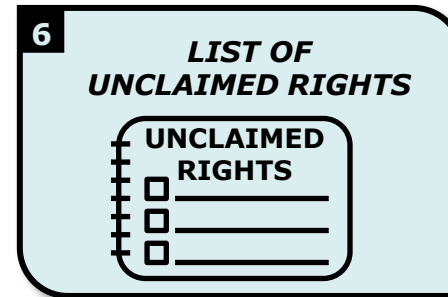
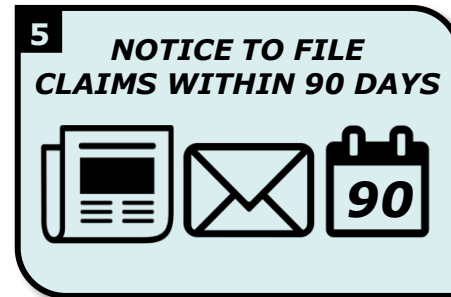
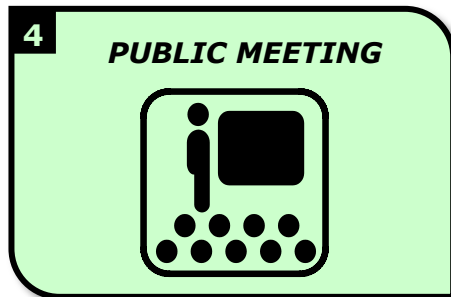
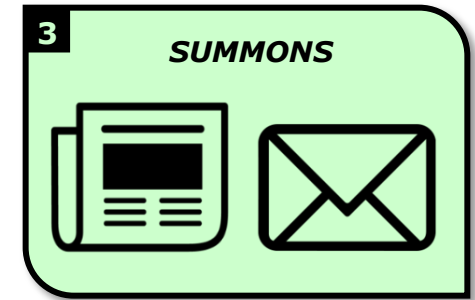
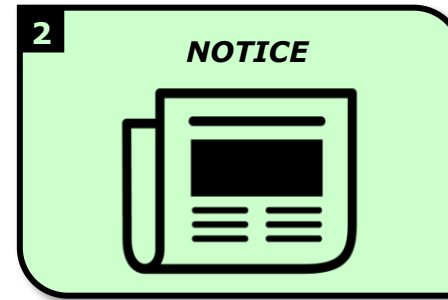
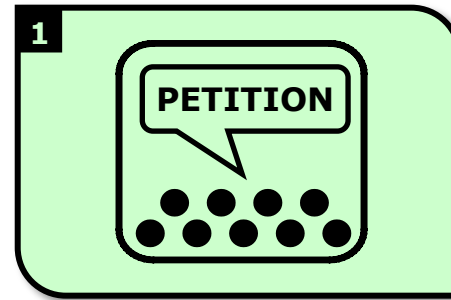
Blake W. Bingham, P.E.

Assistant State Engineer - Adjudication

Utah Division of Water Rights

www.waterrights.utah.gov

The Adjudication Process



Water User's Claims & Investigation

Notice to Submit Claims

1



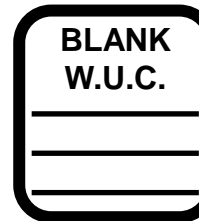
Mailed
to water right
owners and
property owners



Published
in a local
newspaper

Water User's Claim Forms

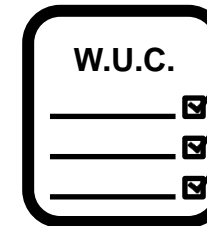
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**Property
Owners**
A blank water
user's claim is
mailed to
property owners

Water Right Owners

A pre-filled water
user's claim is
mailed to water right
owners of record



Filing Water User's Claims

3

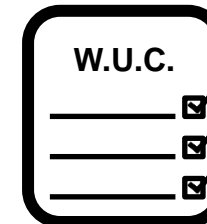


**District
Court
or
State
Engineer**

Claimants will have **90 days** to complete/review and file their water user's claims with the **District Court** or **State Engineer**. Claimants can request one **30-day extension** from the State Engineer prior to the conclusion of the 90-day period.

Claim Investigation

4

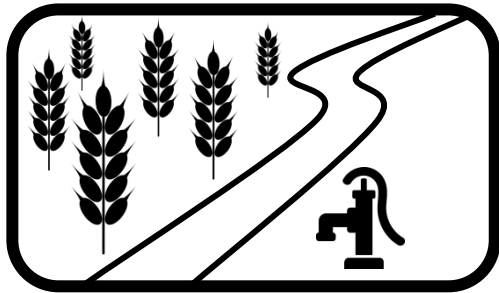


Water user's claims that are filed are **investigated**. This investigation forms the basis of the State Engineer's recommendation to the District Court.

Mapping & Proposed Determination

Hydrographic Mapping

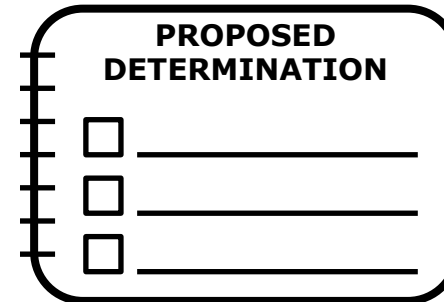
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During the investigation process, the claim is mapped. Maps generally include **POD locations, ditches/canals, irrigated acreage**, and **storage** where applicable.

Proposed Determination

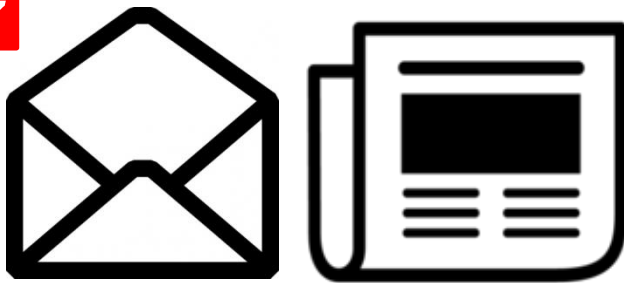
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Water user's claims that are filed are **investigated** and **mapped** by the State Engineer and included in the Proposed Determination. The Proposed Determination and WUCs are filed with the Court.

Notice of Proposed Determination

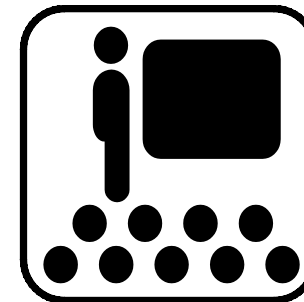
7



Notice of the Proposed Determination is **mailed** to claimants and **published** in a local newspaper with information on how to access a copy and notice that claimants have **90 days to file an objection**.

Public Meeting

8



A **public meeting** is held once the Proposed Determination is published / filed with the court.

Evaluating Claims

1. If ***not numbered***, staff will attempt to reconcile the WUC with an ***existing water right*** of record.
 - Not always possible when claims are first filed, but identification of the applicable right may become more apparent during the evaluation and assigned accordingly.
 - If no water right of record is apparent, staff assign a file jacket number.
 - When a claim is assigned a new or different file jacket number, the claimant is provided notice of the new number.
2. If the claim asserts ***pre-statutory use*** not otherwise represented by a diligence claim or underground water claim, staff will base their evaluation on the evidence of pre-statutory use submitted with the claim.
 - The threshold for the State Engineer's recognition of pre-statutory use in the context of a general adjudication is "***preponderance of evidence***" or "more likely than not."
3. For perfected rights of record, staff will ***review the underlying records*** to identify existing limitations of beneficial use, flow rates, period of use, places of use, etc..
4. Staff conduct a ***review of aerial imagery*** of the claim to identify key features and scope of the anticipated field review.

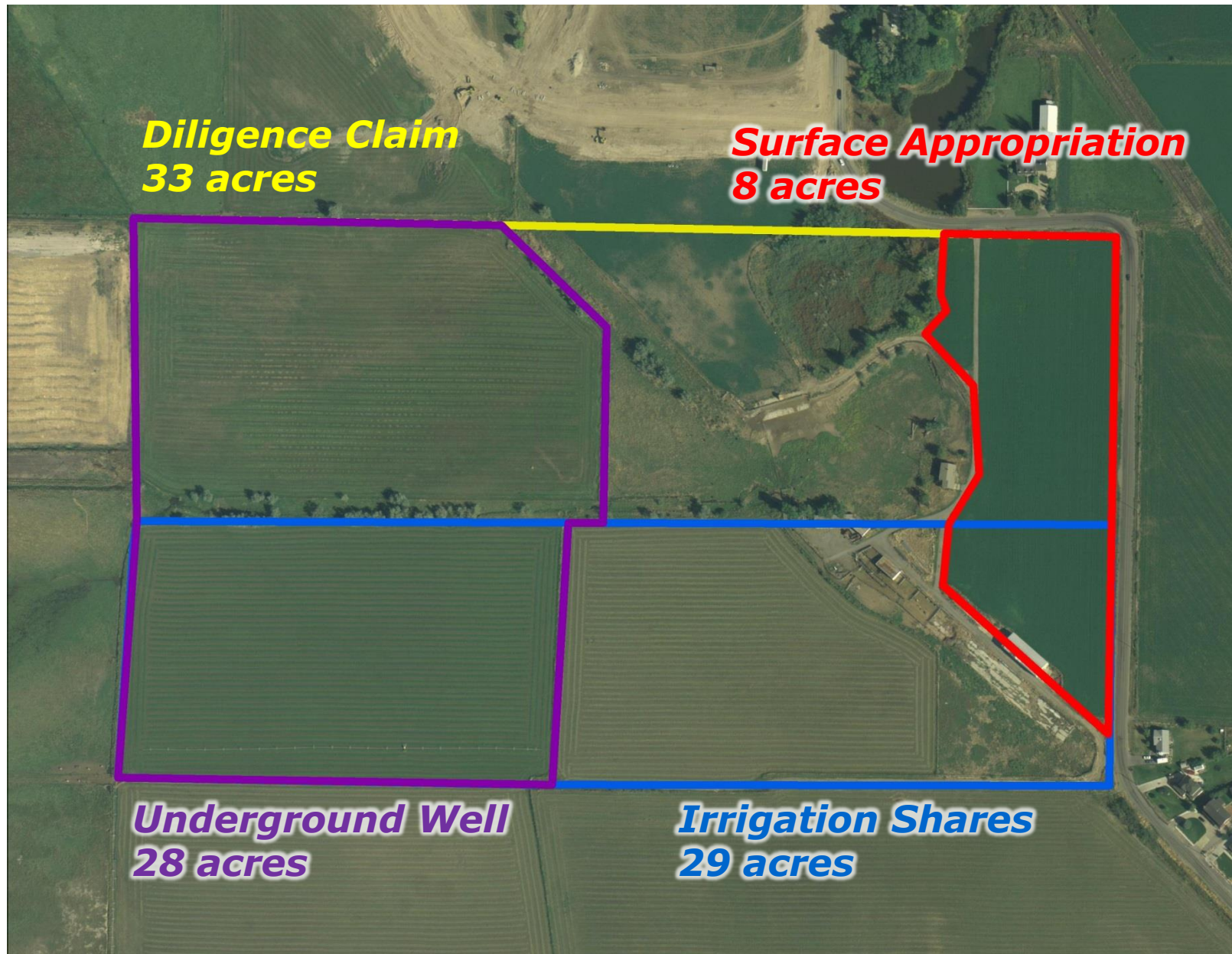


Evaluating Claims (Cont'd)

5. Staff ***set up an appointment*** with the claimant and conduct a ***field review***.
 - Appointments may not always be possible due to scheduling conflicts; however, it's always ***preferred to have water users on sight*** to aid in the explanation of the claim.
6. Following the field review, staff ***evaluate the observed beneficial uses*** in context of the filed WUC, field review, and basis of right.
7. Where the State Engineer's evaluation differs from the filed claim:
 - Staff prepare a ***State Engineer's Recommendation*** (SER), map (if applicable), and a memo to file delineating the reason for the difference.
 - The SER, map, and memo are mailed to the claimant as a courtesy to prompt further dialogue if needed.
 - The ***SER and map serve as the basis*** for the forthcoming Proposed Determination and Hydrographic Survey Map.
8. Where the State Engineer's evaluation concurs with filed WUC:
 - The WUC is mapped and published in the forthcoming Proposed Determination and Hydrographic Survey Map.
 - This ***rarely occurs*** unless a right has recently been certificated.



Evaluating Claims (Cont'd)



	33 ac
	29 ac
	8 ac
	28 ac
Total	98 ac

Common Issues

- **Title Ownership**

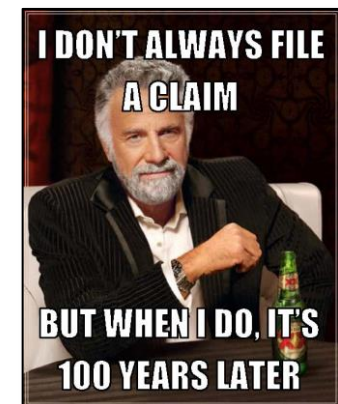
- Claimants (who are not the owner of record) may file a “claimant claim” to prevent a water right of record from being included on the List of Unclaimed Rights.

- **Pending Adjudication Claims & Pre-statutory Use**

- WUCs asserting pre-statutory use will need to include information and evidence supporting the assertion.

- **Evaluating Irrigation Companies**

- Irrigation shares often supplement other privately owned water rights. Sole supplies must be evaluated by the State Engineer among the two competing interests.
- The mapping of irrigation is a “snap shot in time” to identify the extent of beneficial use (i.e., total amount of irrigation).
- Shareholders who hold more shares than the footprint of their irrigated acreage may contribute to partial forfeiture of an irrigation company’s rights. Companies may allocate the loss to the respective shareholder (Utah Code § 73-1-4.5).
- Irrigation shares owned by public water suppliers **may** be protected from forfeiture.



Common Issues

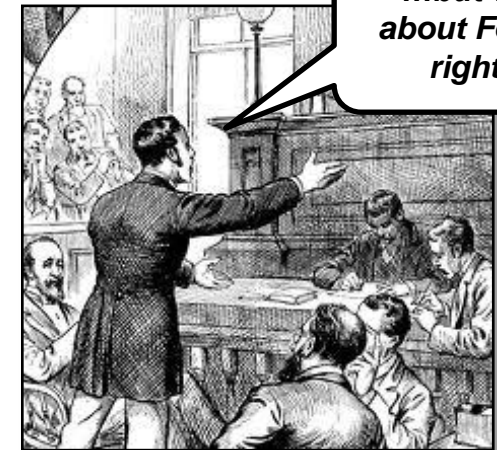
• **Unauthorized Uses**

- Unauthorized (i.e., illegal) beneficial use may protect against forfeiture (Eskelsen v. Town of Perry)
- Must be from the **same source** for unauthorized use to be recognized by State Engineer and recommended in a PD.
- WUC and PD include notes that the beneficial use is unauthorized and requires a change application to conform with Utah law.
- Unauthorized changes are punishable as a class B misdemeanor up to a third degree felony. (Utah Code § 73-3-3 and 73-2-27)



• **Federal Joinder & Reserved Rights**

- The Federal Government has not been joined in some adjudications.
- The State Engineer has typically engaged in settlement negotiations rather than litigating Federal Reserved Rights.
- Some proposed determinations simply defer to handling Federal Reserved Rights at a later date.



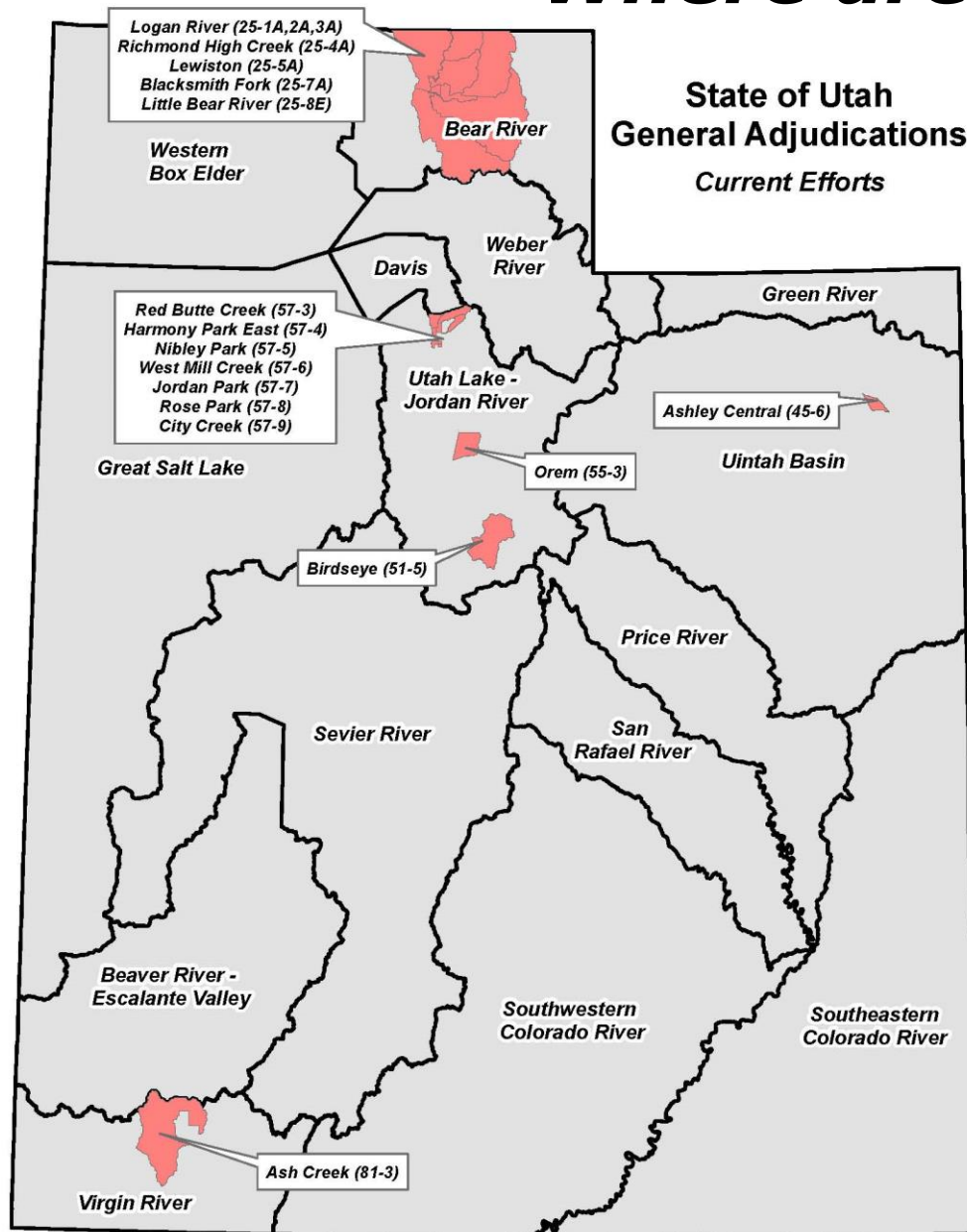
...but what
about Federal
rights?

• **WUC Education**

- WUCs mistakenly filed for a person's culinary water service connection.
- WUCs filed for speculative purposes.
- Incomplete WUCs that do not meet statutory minimum information requirements.



Where are we today?



- **State-wide Program** focusing on Adjudication
- Consists of **11 staff members**
 - Assistant State Engineer
 - Adjudication Engineer
 - 3 Attorneys
 - 2 Adjudication Team Leaders
 - 4 Adjudication Technicians (2 interns)
- **Regional Offices** support Adjudication efforts as available.
- Continually working with the **Attorney General's office** to resolve objections to previous Proposed Determinations in order to obtain interlocutory decrees. There are **over 440 un-resolved objections** on record.

Questions?

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